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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,066	08/15/2001	Eizo Ito	Q65807	8907

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EXAMINER	
HENDRICKS, KEITH D	

ART UNIT	PAPER NUMBER
1761	4

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

[redacted]

AS-4

Office Action Summary	Application No.	Applicant(s)	
	09/929,066	ITO ET AL.	
	Examiner	Art Unit	
	Keith Hendricks	1761	

-- The MAILING DATE of this communication app ars on the cover she t with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-6 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-6 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The phrase "a composition extracted from a specific liquid" is indefinite in claims 1-4, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The claim refers to "a superoxide scavenger", which "comprises a composition", which is "extracted from a specific liquid". The claims describe nothing about the superoxide scavenger, which is the object of the invention. The claims describe nothing about the "composition" that the scavenger comprises, which is somehow derived by extraction from a "specific liquid". The claims only refer to the method of preparing the "specific liquid", in general terms at that. Thus, the claims are not even directed to a "product-by-process", as there is a discontinuity between the process steps, and how one skilled in the art is to arrive at the *claimed* composition of matter.

Further, the phrase above, as well as the remainder of claims 1-4, do not provide a mode by which the composition is extracted from the "specific liquid", nor do they provide a structural corresponding relationship to the specific liquid, from which the composition is extracted. Also, the distinction between these claims and the "beverage containing a specific liquid prepared by" the *same steps*, is unclear.

Note that claim 3 is even further removed from the actual composition product, with respect to the issues stated above, in that it is directed to "a beverage" which contains "a superoxide scavenger", which "comprises a composition", which is "extracted from a specific liquid".

Finally, there does not appear to be any extraction step disclosed or described in the specification, such that the claimed invention would be supported by the current language therein.

The step of "leaving said grain liquor with said yeast", is suggested to be amended to "fermenting said grain liquor with said yeast", which is the actual process involved, and thus provides a positive, active method step for producing the claimed product. As such, "leaving" is not a positive, active method step which describes the actual process that takes place.

In claims 2, 4 and 6, it is suggested that the term "wherein" be inserted between "claim 1 [or 2 or 5]," and "said".

In claim 3, line 2, the term "comprising" should be "comprises", due to the phrase "in which said", preceding it in the claim.

Claim 4 is redundant and not further limiting from claim 2. It is a substantial duplicate of claim 2, and thus cancellation or amendment of at least one of claims 2 or 4, is required.

Claim 6 is indefinite for the recitation of the phrase "a superoxide scavenger as defined in claim 5." Claim 5 is directed to a beverage, and does not refer to a superoxide scavenger, nor does it provide the basis for any structural relationship thereto.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the removal of the grain or grain components from the grain liquor. See the last sentence of page 3, to the top of page 4 of the specification, as well as the example description at the top of page 5, where the "soybeans were removed to obtain an initial liquor". This step is an essential step to the claims, for it, at the least, clarifies that the remainder of the steps, and thus the product itself, do not contain the grain or solid grain components.

Claim Rejections - 35 USC § 102 & 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Qian (CN 1123833, only abstract available at this time).

CN `833 discloses a process for "brewing beer from a soyabean protein liquid." The process involves boiling the soybeans in a liquid, filtering and cooling the liquid, and inoculating the liquid with yeast. The liquid is fermented with the yeast, filtered again, and sterilized. Although not directly disclosed in the English-language abstract, the process would inherently incorporate a step of "supplying oxygen", including such steps as stirring or utilizing an open container, as the yeast would necessarily ferment the soybeans under aerobic conditions. Note that the instant specification discloses at page 4, lines 3-5, that "suitable yeast includes any yeast belonging to Saccharomyces, such as beer yeast, wine yeast, sake yeast, or baker's yeast". Such yeast (a) produce alcohol by fermenting sugars and starches, and (b) ferment aerobically, as well. Alternatively, the inclusion of a step to agitate the fermenting mixture in order to supply oxygen to the living yeast organisms, would have been obvious to one of ordinary skill in the art, based upon the teachings of the reference, as well as the knowledge of the state of the art at the time the invention was made, in order to facilitate the fermentation, and maintain the viability of the yeast.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kakeko (JP 57-125669).

JP `669 discloses a process for producing fermented rice and soybean. The process involves boiling the soybeans in water, cooling the liquid mixture, and inoculating with yeast. The liquid is fermented with the yeast to produce a "fermentation liquor", and sterilized by boiling. Although not directly disclosed in the English-language abstract, the process would inherently incorporate a step of "supplying oxygen", including such steps as stirring or utilizing an open container, as the yeast would necessarily ferment the soybeans under aerobic conditions. Note that the instant specification discloses at page 4, lines 3-5, that "suitable yeast includes any yeast belonging to Saccharomyces, such as beer yeast, wine yeast, sake yeast, or baker's yeast". Such yeast (a) produce alcohol by fermenting sugars and starches, and (b) ferment aerobically, as well. Alternatively, the inclusion of a step to agitate the fermenting mixture in order to supply oxygen to the living yeast organisms, would have been obvious to one of ordinary skill in the art, based upon the teachings of the reference, as well as the knowledge of the state of the art at the time the invention was made, in order to facilitate the fermentation, and maintain the viability of the yeast.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (703) 308-2959. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9565 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

KEITH HENDRICKS
PRIMARY EXAMINER